

In the Matter of Amendment of Section 73.202(b)

Table of Allotments, FM Broadcast Stations

San Clemente, CA - Channel 285A

MM Docket No. 93-295 RM-8362

FEDERAL COMMUNICATIONS COMMISSION

DA 93-1351

COMMENT RE: NOTICE OF PROPOSED RULEMAKING

AND EXPRESSION OF INTEREST

PETITIONER: STEVEN R. BARTHOLOMEW

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Federal Communications Commission  
Washington, DC 20554

This Comment is filed in response to the above-referenced Notice of Proposed Rulemaking (hereinafter, NPRM). The NPRM seeks to delete the allotment of Channel 285A at San Clemente, California. For the reasons set forth below, the Petitioner urges the retention of Channel 285A at San Clemente. This allotment serves the public interest and should be retained.

In the NPRM, the Commission states that any party filing an expression of interest in retaining Channel 285A at San Clemente will be required to provide evidence that military policy against allowing a commercial transmitter to be located on Camp Pendleton has changed. Such evidence is solicited because a fully-spaced site outside of the boundaries of Camp Pendleton is not geographically possible.

## I. AVAILABILITY OF A FULLY-SPACED TRANSMITTER SITE

The Petitioner hereby submits evidence that a transmitter site within the boundaries of Camp Pendleton is available. In 1964, Southern California Edison received a 60-year lease on 83 acres of Camp Pendleton property. This lease was obtained through Congressional fiat, and the San Onofre Nuclear Power Plant was constructed on a portion of this land. In 1982, Southern California Edison and Camp Pendleton officials signed a 50-year lease for another 130-acre tract East of Interstate 5. This land (83 + 130 acres) is now under the dominion and control of Southern California Edison (80%) and San Diego Gas and Electric (20%).

The Petitioner spoke with Steven Conroy, Director of Corporate Communications for Southern California Edison. It was learned that Southern California Edison has placed two communications towers on their leased property. A first tower is at latitude 33-22-06, longitude 117-33-05, on the 83-acre tract, and is used for private radio service station WBD350. A second tower is at latitude 33-22-44, longitude 117-33-36, on the 130-acre tract, and is used for private radio service station WNEH240. The towers include antennas for transmitting and/or receiving on the following frequencies specified in mHz: 138.600, 140.500, 140.520, 464.675, 465.000, 451.025, 451.250, 451.200, 451.1125, 451.1625, 451.2125, 451.2625, 451.3125, 151.625, 154.570, 154.600, 6585, and 6685.

Southern California Edison verbally indicated that they may be willing to lease tower space to the Petitioner for an FM broadcast antenna. Southern California Edison may also allow Petitioner to construct a new FM broadcast tower on the leased land. At the present time, they are still considering the matter and have not provided a final answer. However, due to the proliferation of other communications services on the Southern California Edison towers, it is likely that the company would

be amenable to the Petitioner's proposal. Since Southern California Edison has already placed radio communications towers on its leased property, and since these towers have been in use for a number of years, Camp Pendleton officials are now estopped from asserting any lease provision not allowing such a land use.

Use of the existing Southern California communications towers for an FM broadcast station is a matter to be decided by Southern California Edison officials, and not officials of Camp Pendleton. Furthermore, use of Southern California Edison leased land for the purpose of erecting a new tower for an FM broadcast station is also a matter to be decided by Southern California Edison. Given the present factual scenario, under existing California landlord-tenant law, Camp Pendleton officials cannot proscribe any reasonable use of the land by Southern California Edison, such as the erection of an FM broadcast antenna on an existing tower. Likewise, the erection of an additional communications tower may also be considered a reasonable use of the land.

As a practical matter, Camp Pendleton officials are not likely to object to the placement of an FM broadcast antenna on land already leased to a third party on a very long-term basis. Moreover, Camp officials are estopped from objecting to such a land use on the San Onofre tracts. A major concern of Camp officials is the increased pressure to "carve up" portions of the Camp for various civilian uses, including potato farming and nude beaches. Petitioner has good reason to believe that this is the fundamental reason why Camp officials do not want an FM transmitter on their land. Since the land on which the San Onofre Nuclear Power Plant was built has already been carved out of Camp Pendleton, Camp officials are not likely to object to an FM transmitter on power company land, nor would they view an FM transmitter on this land as an additional carving-up of the Camp.

Due to the fact that Southern California Edison property may be available for the purpose of an FM transmitter site, Channel 285A should be retained at San Clemente. It may be possible to operate a fully-spaced Class A FM broadcast station from portions of the Southern California Edison property. At the very least, the Petitioner requests a stay of the present NPRM, pending a resolution of the issues discussed above. As stated in the NPRM, the Petitioner is required to demonstrate that it has taken positive measures to obtain assurances from the owner of its proposed site that it will be able to buy or lease the location specified in its comments. It is submitted that Petitioner has exercised due diligence in taking these positive measures. The Camp Pendleton situation was fully investigated and a potential solution advanced, despite the seemingly high hurdles to be overcome. The matter is now outside of the Petitioner's control and in the hands of Southern California Edison. It is submitted that deletion of Channel 285A at San Clemente is premature in view of the information presented herein.

The Petitioner has proposed coordinates of 33-22-44, 117-33-36, based upon the location of an existing tower. These coordinates are on Southern California Edison leased land. At these particular coordinates, the San Clemente proposal would be short-spaced by 1.6 miles to KCBQ, San Diego. The Petitioner would use a directional antenna to overcome this problem, and/or specify a non-short-spaced site if such is available on the confines of the Southern California Edison property.

## II. CITY-GRADE COVERAGE OVER PRINCIPAL CITY

In the NPRM, the Commission stated that any expressions of interest specifying sites conforming with the minimum distance separation requirements of Section 73.207(b) in response to this Notice will be required to submit specific showings to

demonstrate the ability to provide a 3.16 mV/m (70 dBu) contour over the entire principal community of San Clemente, as required pursuant to Section 73.315 of the Commission's rules. As indicated in the attached Exhibit, using proposed coordinates of 33-22-44 North Latitude, 117-33-36 West Longitude, an antenna height above average terrain of 305 meters, and an effective radiated power of 270 watts, a signal of 70 dBu or better is provided to the entire community of San Clemente. These coordinates correspond to the site of Southern California Edison's communications antenna East of Interstate 5.

An antenna height of 305 meters is proposed in order to clear a 273-meter ridge between the proposed transmitter location and a relatively small portion of San Clemente which would otherwise be shadowed by the obstruction. An effective radiated power of 270 watts is proposed because, at a HAAT of 305 meters, this is the maximum permissible power for this type of Class A station.

It is possible to use an antenna much lower than 305 meters, while minimally sacrificing San Clemente coverage. For example, using an antenna height above average terrain of 100 meters and an effective radiated power of 3000 watts, approximately 80% of San Clemente is covered with a 70-dBu signal. More importantly, the entire business district is covered with a city-grade signal, and the signal propagates well throughout the more densely-populated coastal areas. The portion of San Clemente not covered with a 70-dBu signal is a predominately residential area where many of the houses are situated along rugged cliffs, hillsides, and deep, narrow canyons. Accordingly, reception at many locations in this area would be difficult, irrespective of whether Petitioner's antenna was 305 meters or 100 meters above average terrain. Moreover, even with a relatively low antenna, it is still possible to cover a significant portion of San Clemente with a 70-dBu signal from Petitioner's proposed location.

If it is not possible to erect a 305-meter tower at Petitioner's proposed location, the Petitioner would request a waiver of Section 73.315. It is believed that such a waiver would be appropriate in such circumstances. In view of the complex terrain throughout the San Clemente area, it may be prudent for Petitioner to submit field strength measurements showing the actual extent of 70-dBu coverage from any proposed transmitter site for which the conventional propagation prediction methods set forth in Part 73 show less than 70-dBu coverage in any portion of San Clemente. Such measurements may aid in the determination of whether or not a waiver is appropriate.

Due to the relatively rugged terrain throughout much of Southern California, many FM stations in this part of the country do not provide 70-dBu coverage over the entire principal community as required under Section 73.315. Consequently, many of these stations are operating with Section 73.315 waivers. For example, none of the eleven commercial stations licensed to San Diego provides 70-dBu coverage to the entire community of San Diego. Actually, due to terrain shielding, some areas do not even receive a 60-dBu signal. The terrain in San Clemente is very similar to that found in San Diego, and very different from the relatively flat terrain throughout the LA basin.

An additional reason advanced in support of a Section 73.315 waiver is that the Petitioner's proposed transmitter location would result in minimal or no interference to KKGQ, Channel 286B, Los Angeles, especially when compared with the San Clemente Peak site previously advocated by various proponents of this assignment.

With respect to KKGQ, operating as an adjacent-channel, grandfathered Class B from Los Angeles, the Petitioner's proposed transmitter location offers a critical advantage over sites which have been previously proposed by other Applicants. The Petitioner's proposed site is naturally terrain-shielded from

the Los Angeles basin. High ridges occurring to the North and East of San Clemente serve to naturally isolate Petitioner's 104.9 signal from KKGQ at 105.1. On the Southwesterly side of the ridge, 104.9 would dominate, whereas, to the North of San Clemente, 105.1 would be free of interference. It is easy to observe this effect by driving North along Interstate 5 from Oceanside to Laguna Beach. From Oceanside until well beyond the San Onofre area proposed as Petitioner's transmitter location, motorists are not able to receive KKGQ (105.1) clearly, because KCBQ (105.3, San Diego) consistently provides a much stronger signal in this region. However, KKGQ abruptly dominates KCBQ as soon as the motorist passes San Clemente Peak. Therefore, with judicious selection of transmitter locations, it is possible to provide new service to a community without significantly degrading existing service.

#### IV. AN ALTERNATE PROPOSAL:

##### A SUITABLE TRANSMITTER LOCATION IS AVAILABLE OUTSIDE OF THE BOUNDARIES OF CAMP PENDLETON

The Petitioner hereby presents an alternate transmitter location for consideration. The primary difficulty with the Channel 285A assignment in San Clemente is this: Short-spacing to Channel 286B in Los Angeles. Unfortunately, all fully-spaced sites are within the boundaries of Camp Pendleton. However, a very good site is available outside of Camp Pendleton. This site presents only one short-spacing, which is of a de minimus nature (less than one mile), as contrasted with the San Clemente Peak proposals involving short-spacings of more than three miles.

The alternate proposal presented herein may be preferred to the proposal previously discussed in connection with the Southern California Edison site because of the 1.6-mile shortspacing to KCBQ at the coordinates proposed above. Although it is submitted that a shortspacing of 1.6 miles to KCBQ, an

alternate-channel non-super-powered Class B, is of a relatively minimal nature compared with the 3.65-mile shortspacing to an adjacent-channel, superpowered Class B presented by previous applicants for Channel 285A, the Commission may, nevertheless, prefer the proposal to be discussed immediately below.

The alternate site proposed herein is at latitude 33-23-19, longitude 117-35-42, on property controlled by the Atchison, Topeka, and Santa Fe (ATSF) Railroad. This site was chosen because it is the most Southeasterly location possible outside of the boundaries of Camp Pendleton. Consequently, this site is the least short-spaced site available with respect to KKGQ, Los Angeles. The site is fully-spaced with respect to all other stations, CP's, assignments and allotments. Although a narrow strip of land exists between this site and the Northwestern boundary of Camp Pendleton, this strip belongs to San Onofre State Park, and is not available for use as a transmitter location.

The Petitioner is in the process of negotiating for use of the ATSF land. Petitioner requests a stay of the Commission's NPRM deleting Channel 285A from San Clemente, pending the outcome of this investigation. Petitioner is a relative latecomer to this channel allocation proceeding, and has not received the benefits of "riding on the coattails" of other Applicants. As stated in the NPRM, Petitioner has taken positive steps to locate a suitable transmitter location, and Petitioner has commenced this investigation from "ground zero". Moreover, Petitioner is willing to do whatever is necessary to obtain a transmitter site location acceptable to the Commission, to the extent that such a location exists.

The ATSF site is located exactly 64.00 miles from the KKGQ transmitter site. The applicable FCC rules require a separation of 65 miles. However, the FCC recognizes that short-spacings of no more than one mile are de minimus. In such cases, the threshold showing of no available fully-spaced site is not



required. The Commission may grant a short-spacing waiver even though an Applicant failed to make the threshold showing, provided the Applicant has demonstrated that the public interest will be served despite the minor deviation from our spacing rule. Kenter Broadcasting Company, 62 RR 2d 1573, 1577 n.9 (1986), aff'd. per judgment sub. nom. Kenter v. FCC, 816 F.2d 8 (1987).

One consequence of the Kenter decision is that the Petitioner may not be legally required to show the availability of a fully-spaced site, i.e., a Camp Pendleton site, for purposes of the present NPRM. However, assuming that the availability of the Southern California Edison site discussed above is a separate issue, and for purposes of assessing the ATSF site, the Petitioner must now show that the public interest will be served despite the minor deviation from the spacing rule.

A waiver of the separation rule in the present case would serve the public interest. A second local service would be provided to approximately 160,000 people in the San Clemente area. Although this area is supposedly served by over 30 FM radio stations, virtually all of these stations (with the exception of KWVE, San Clemente) are licensed to the cities of Los Angeles or San Diego, and are directed to serving these large metropolitan areas.

The one station licensed to San Clemente, KWVE, is programmed with a specialized religious format, indicating the necessity and/or desirability of providing the community of San Clemente with a second forum of expression. Since KWVE is a Class B station, the station owners have exploited this fact by targeting their programming at the larger San Diego and Orange County markets, while giving short shrift to local San Clemente residents and businesses. San Clemente business owners who are not of the Christian persuasion would likely feel uncomfortable about advertising on KWVE. Therefore, a second broadcast service for San Clemente would be especially desirable.

It was previously argued that the public interest in receiving a second broadcast service in San Clemente is outweighed by the interference such an operation would cause to KKGQ, Los Angeles. However, this argument was advanced for a different transmitter site which was much more short-spaced than that presently proposed by the Petitioner. Such an argument is not valid when applied to Petitioner's proposed ATSF site. This is because Petitioner's site is terrain-shielded from KKGQ by San Clemente Peak, a 273-meter-high obstruction in a direct line between Petitioner's proposed site and the KKGQ transmitter. This obstruction provides a significant degree of isolation between KKGQ's signal and a signal produced by Petitioner's proposed operation. This isolation was not provided from the previously-discussed San Clemente Peak site. Furthermore, the Clemente Peak site involved a NON de minimus short-spacing of 3.65 miles, whereas the Petitioner proposes a de minimus short-spacing of 1 mile from the ATSF site.

With respect to city-grade coverage over the entire principal community, an antenna height above average terrain of 305 meters at an effective radiated power of 270 watts would clear intervening obstacles between the ATSF site and San Clemente, providing 70-dBu coverage to all of San Clemente. Refer to the attached terrain profiles for further details. If it is not possible to erect a 305-meter antenna at this location, a lower antenna would also be capable of providing 70-dBu coverage to San Clemente. In the event that an antenna sufficiently high to provide a 70-dBu signal over San Clemente could not be erected at this location, the Petitioner would apply for a waiver of Section 73.315. In applying for such a waiver, the factors discussed above with reference to the Southern California Edison site would also apply in the present context.

The Petitioner would like to emphasize that the ATSF site is the best, most fully-spaced site available to a Channel 285A

FM broadcast station outside the confines of Camp Pendleton. Due to the de minimus nature of the short-spacing offered by this site, it is submitted that a Class A station operating from this location would be in the public interest.

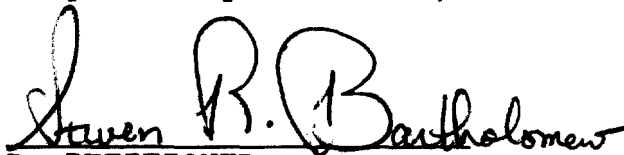
### SUMMARY

The Petitioner has proposed two sites for operation on Channel 285A to provide coverage of the San Clemente area. The first site, termed the Southern California Edison site, is fully-spaced to all co-channel, adjacent-channel, and alternate-channel stations, assignments, CP's, and allotments, except for a 1.6-mile shortspacing to KCBQ, Channel 287B, San Diego. With a 305-meter directional antenna protecting KCBQ, 70-dBu coverage over all of San Clemente is possible.

The second site, termed the ATSF site, is fully spaced to all stations, assignments, CP's, and allotments, with the exception of KKGQ, Los Angeles. However, the extent of the short-spacing is de minimus, at only one mile. If necessary, Petitioner will use a directional antenna at this site to protect KKGQ. The directional antenna will protect KKGQ, even assuming that KKGQ uses the maximum power permitted for a full Class B station (50 kW). This site is the least-short-spaced site possible outside of Camp Pendleton, as is apparent upon examining a USGS map of the San Clemente area. With a 305-meter antenna (or even an antenna of somewhat lesser height), 70-dBu coverage over the entire community of San Clemente is provided from this site.

It is the Petitioner's present intention to apply for Channel 285A if this allotment is retained at San Clemente. If Petitioner is authorized to construct a station on Channel 285A, Petitioner will build the station promptly.

Respectfully Submitted,

A handwritten signature in dark ink, appearing to read "Steven R. Bartholomew", is written over the printed name.

By PETITIONER,  
Steven R. Bartholomew  
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Robbinsville, NJ 08691  
H: (609)-490-0555  
W: (908)-957-3250

APPENDIX A

CHANNEL SPACING TABLE

SOUTHERN CALIFORNIA EDISON SITE

33-22-44 NORTH LATITUDE

117-33-36 WEST LONGITUDE

KDES, Channel 284B

Required Spacing: 65 miles

Actual Spacing: 73.05 miles

XHMC, Channel 285B

Required Spacing: 101 miles

Actual Spacing: 131.97 miles

KKGO, Channel 286B, Los Angeles

Required Spacing: 65 miles

Actual Spacing: 65.48 miles

KCBQ, Channel 287B, San Diego

Required Spacing: 43 miles

Actual Spacing: 41.41 miles

APPENDIX B

CHANNEL SPACING TABLE

ATSF SITE

33-23-19 NORTH LATITUDE

117-35-42 WEST LONGITUDE

KDES, Channel 284B

Required Spacing: 65 miles

Actual Spacing: 74.55 miles

XHMC, Channel 285B

Required Spacing: 101 miles

Actual Spacing: 134.10 miles

KKGO, Channel 286B, Los Angeles

Required Spacing: 65 miles

Actual Spacing: 64.00 miles

KCBQ, Channel 287B, San Diego

Required Spacing: 43 miles

Actual Spacing: 42.94 miles

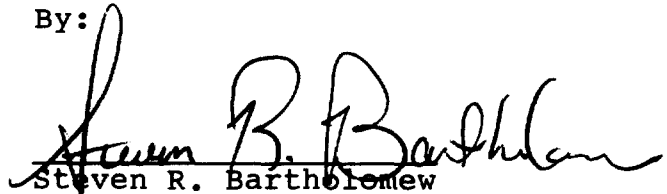
CERTIFICATE SETTING FORTH PROOF OF SERVICE  
PURSUANT TO 47 CFR 1.47

The undersigned hereby declares that he caused an original and four copies of the within COMMENT RE: NOTICE OF PROPOSED RULEMAKING AND EXPRESSION OF INTEREST, RM-8362, and associated Appendices and Exhibits, to be deposited in First Class U.S. Mail, addressed to Secretary, Federal Communications Commission, Washington, DC 20554, on January 31, 1994.

I declare under penalty of perjury under the laws of the State of New Jersey that the foregoing is true and correct.

DATED: January 31, 1994

By:

  
Steven R. Bartholomew

PATH OF 290° RADIAL FROM 33° 22' 44" N  
117° 33' 36" W

FT.

900

800

700

600

500

400

300

200

100

33° 22' 44" N  
117° 33' 36" W

SAN CLEMENTE  
OUTER LIMITS

2

3

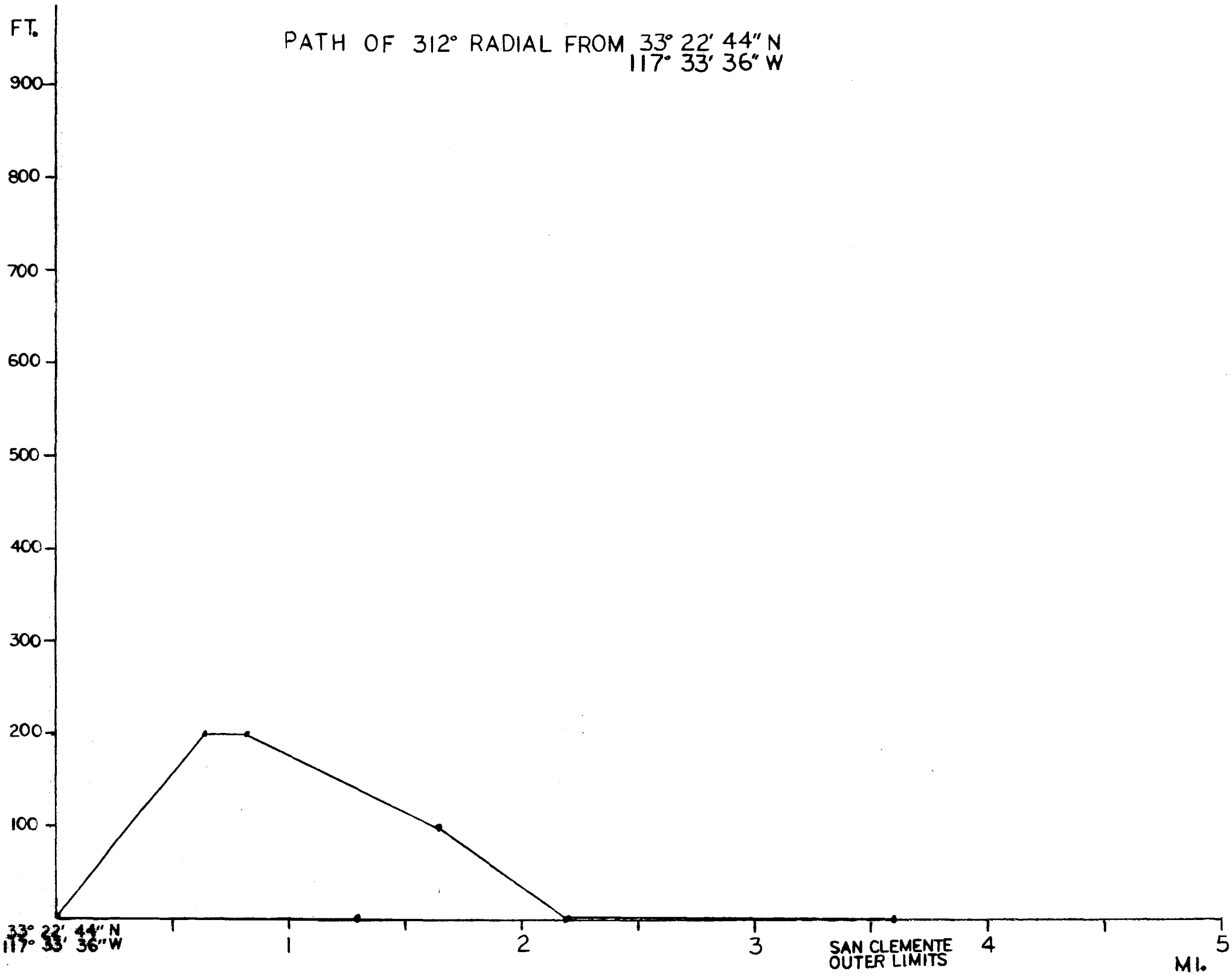
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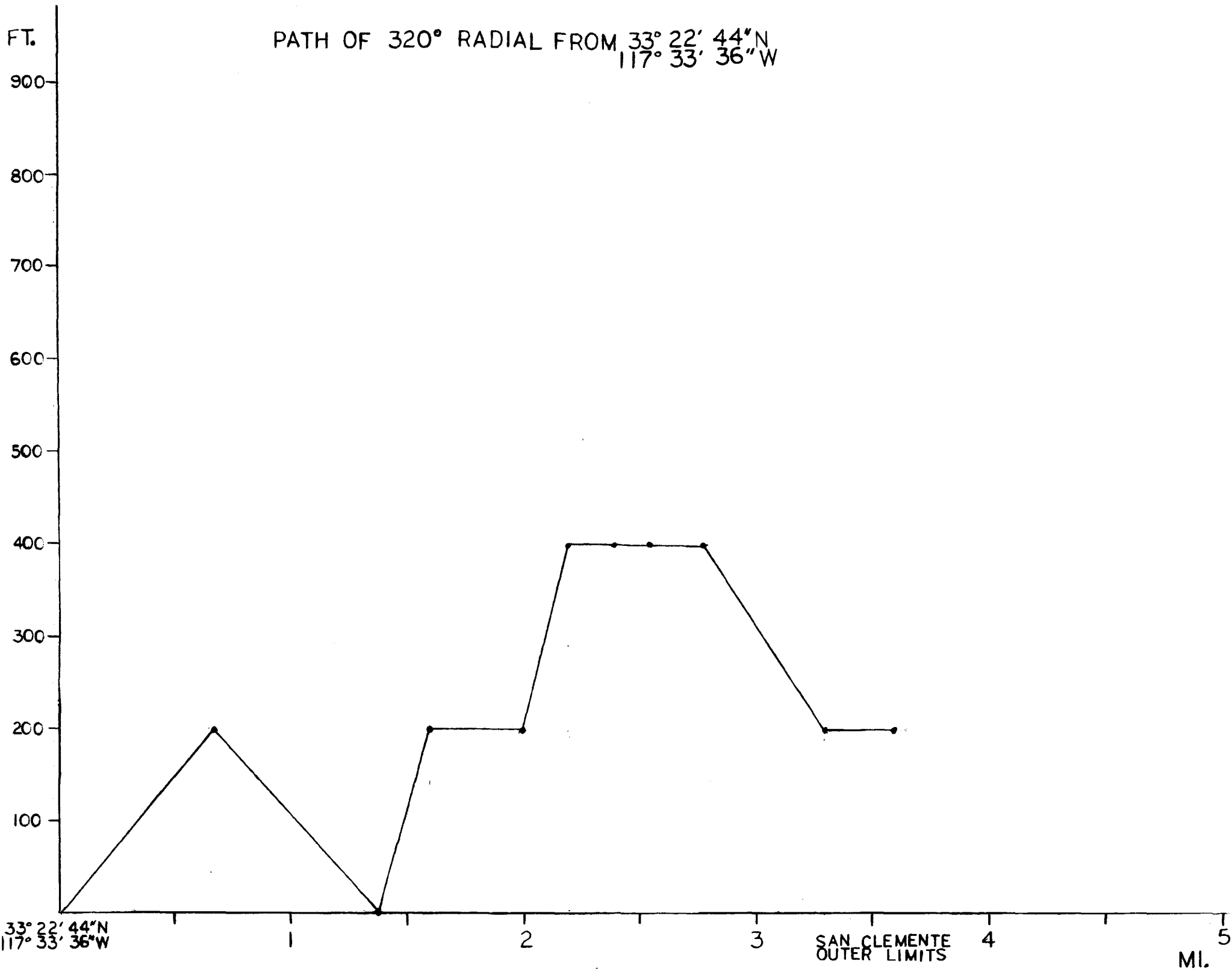
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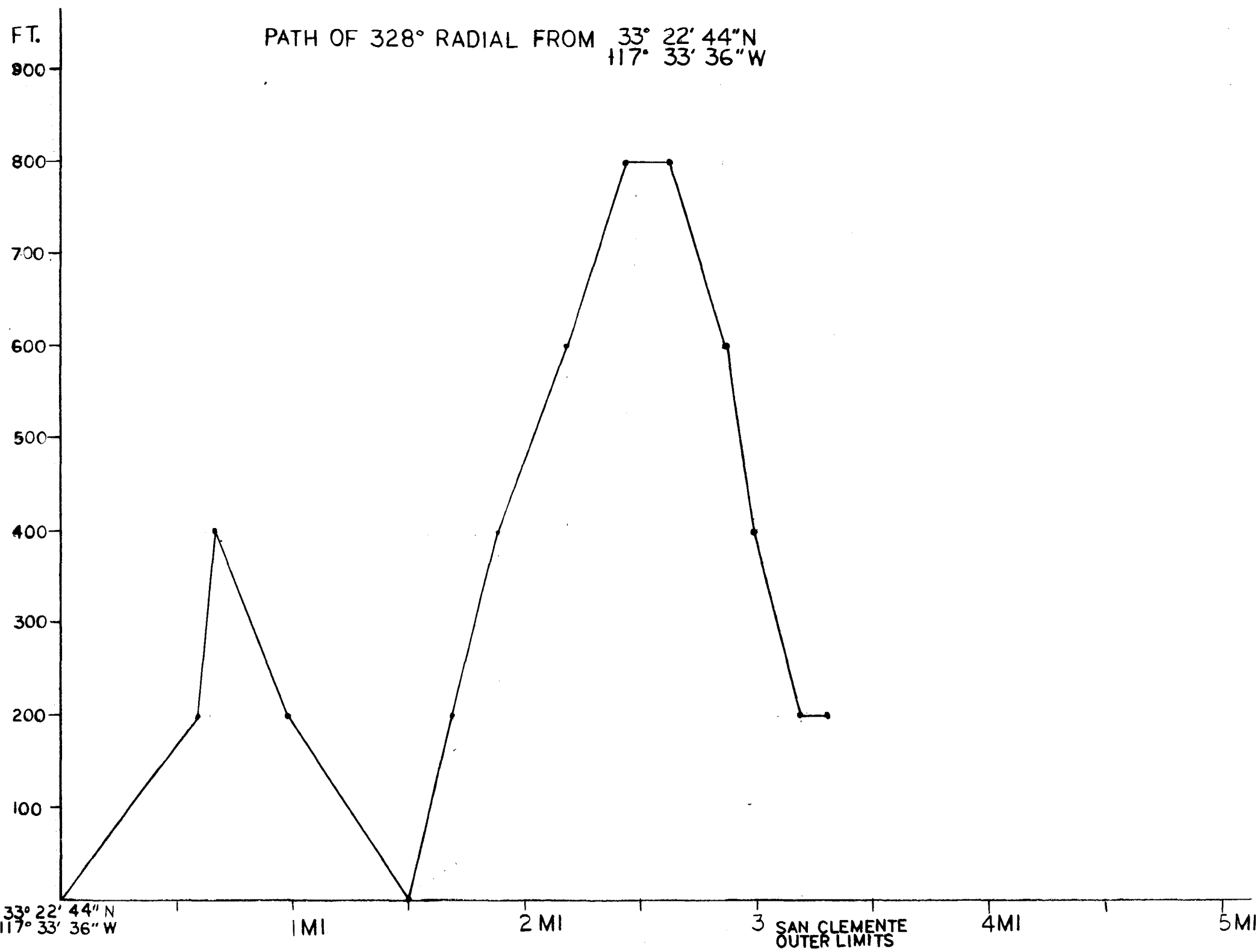
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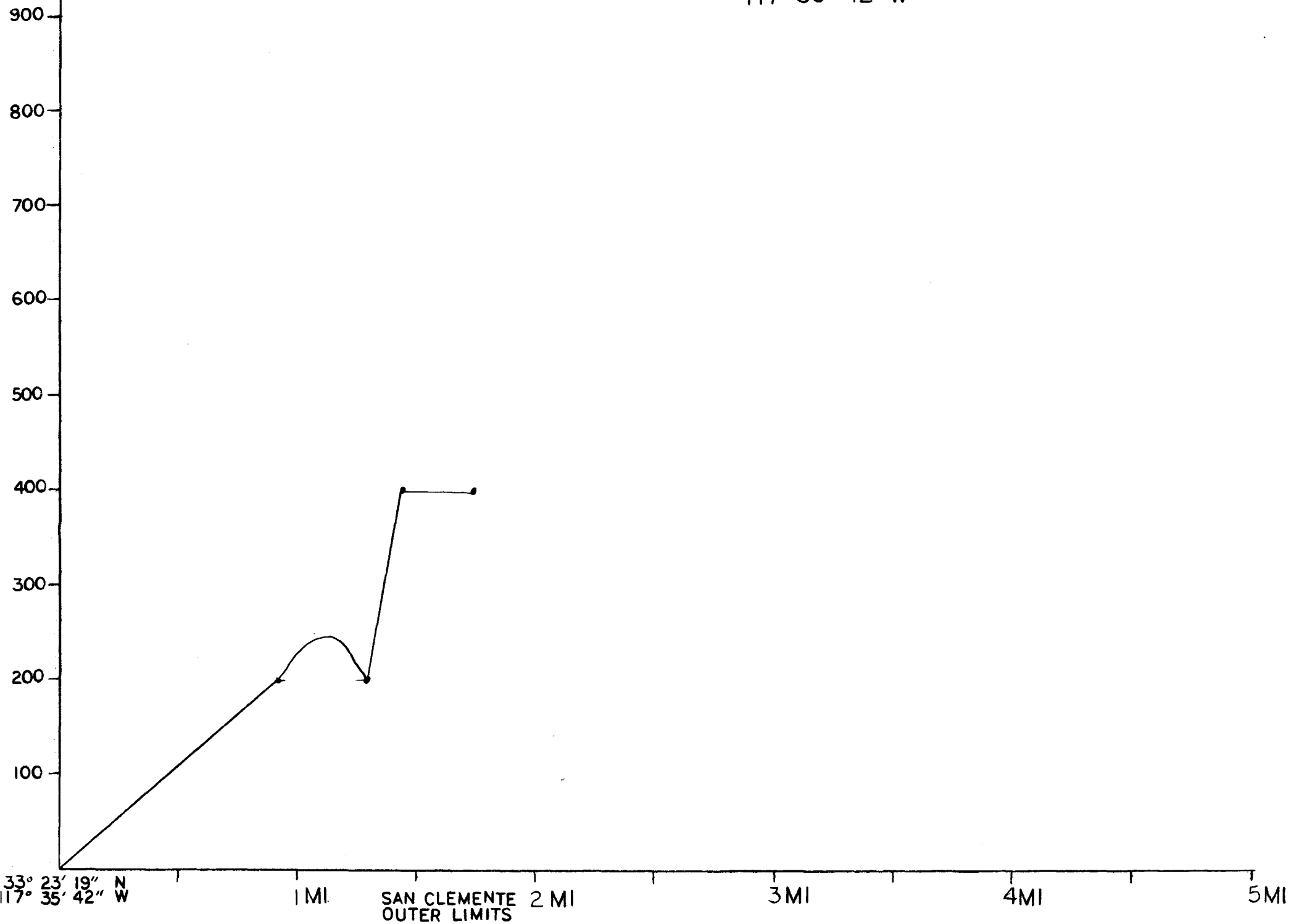






FT.

PATH PROFILE OF 11° RADIAL FROM 33° 23' 19" N  
117° 35' 42" W



33° 23' 19" N  
117° 35' 42" W

1 MI

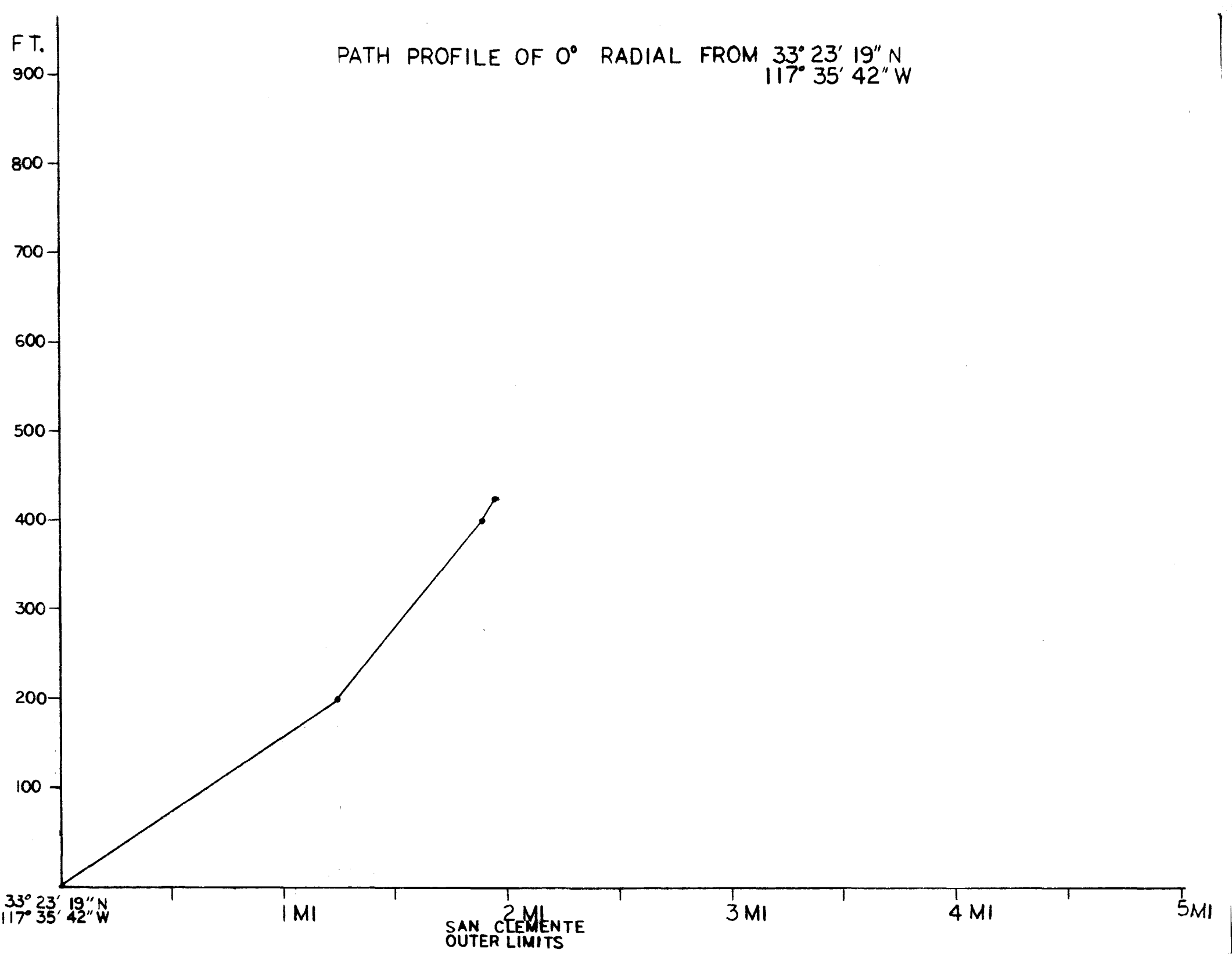
SAN CLEMENTE  
OUTER LIMITS

2 MI

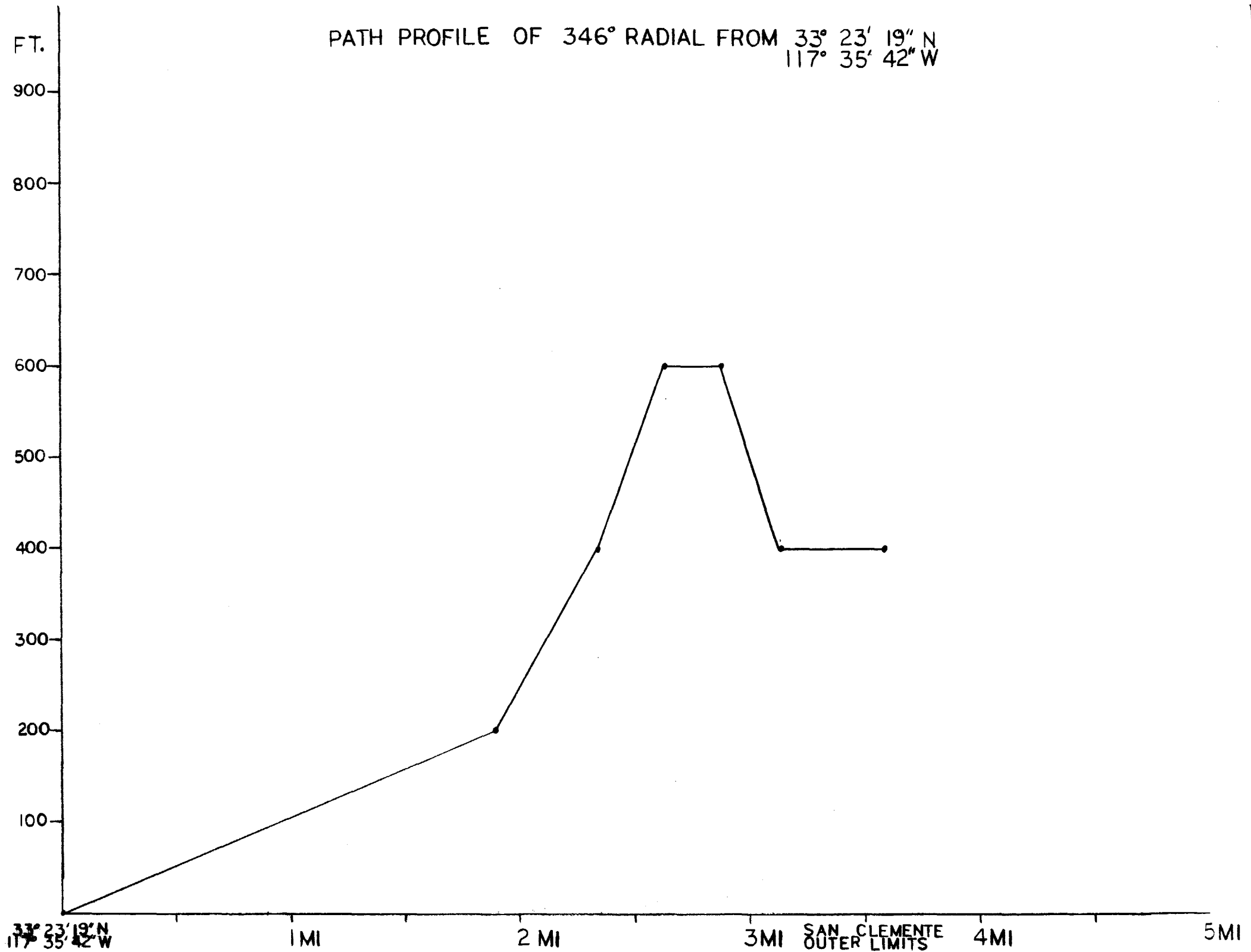
3 MI

4 MI

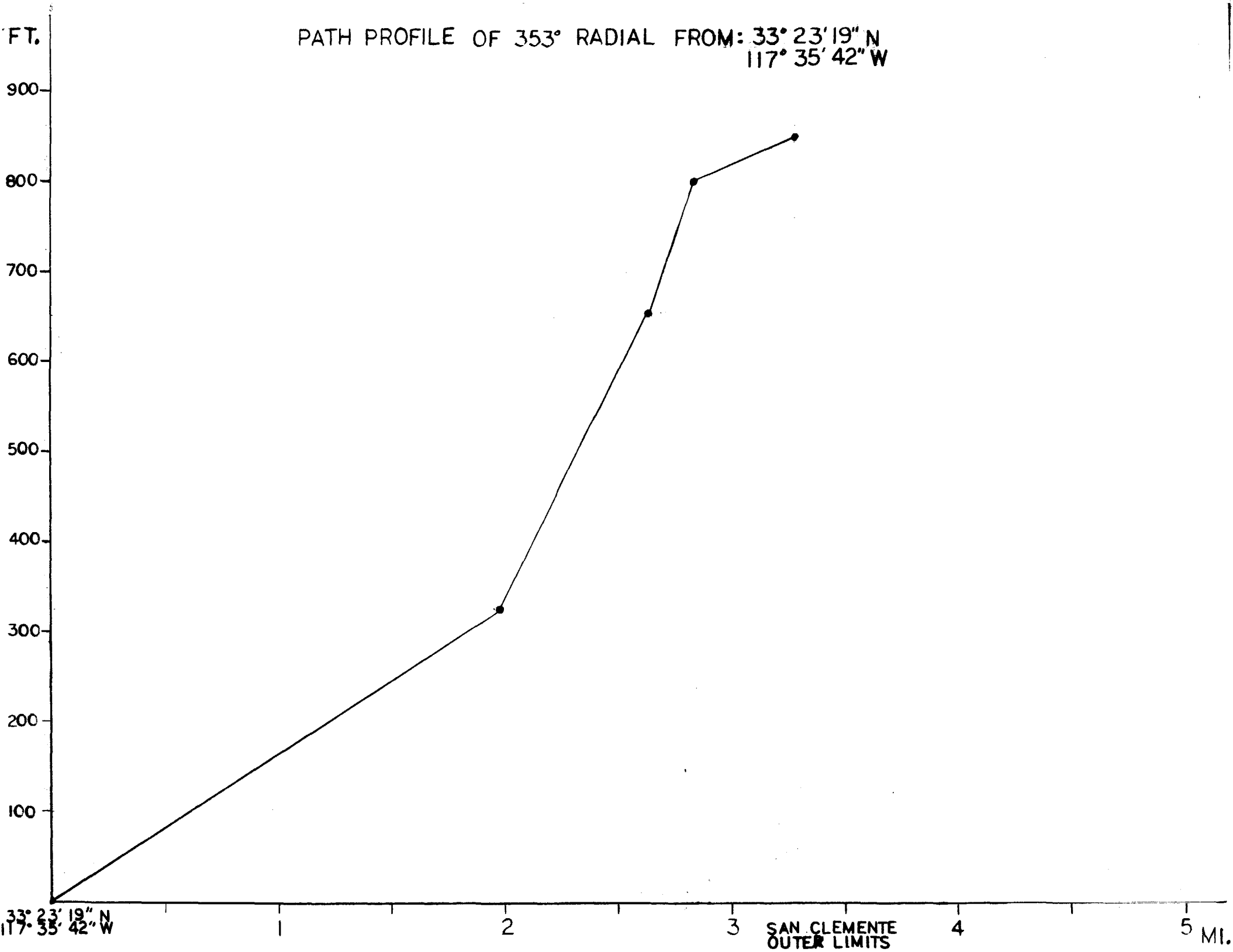
5 MI

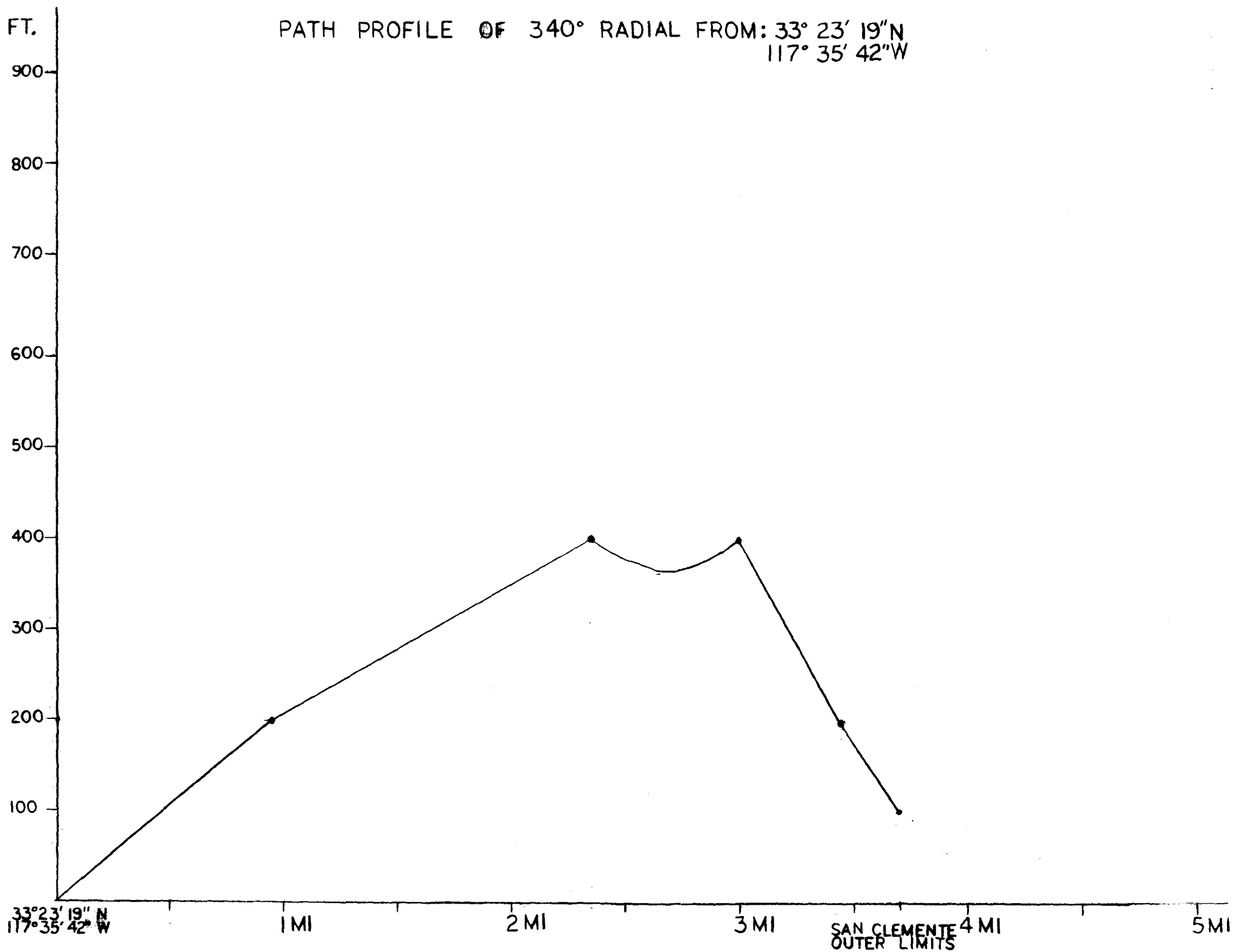


PATH PROFILE OF 346° RADIAL FROM 33° 23' 19" N  
117° 35' 42" W



PATH PROFILE OF 353° RADIAL FROM: 33° 23' 19" N  
117° 35' 42" W







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PURSUANT TO 47 CFR 1.47

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Steven R. Bartholomew

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